

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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2003 DEC 19 P 3:03

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

U.S. DISTRICT COURT
DISTRICT OF MASS.
CIVIL ACTION NO.
01-CV-12257-PBS

THIS DOCUMENT RELATES TO ALL CLASS
ACTIONS

Judge Patti B. Saris

**DEFENDANTS' MOTION FOR LEAVE TO FILE A RESPONSE TO
PLAINTIFFS' DECEMBER 5, 2003 NOTICE OF FILING MODIFIED
AMENDED MASTER CONSOLIDATED CLASS ACTION COMPLAINT**

Pursuant to Rule 7.1(B)(3) of the Local Rules of the United States District Court for the District of Massachusetts, defendants move this Court jointly for leave to file a Response to Plaintiffs' December 5, 2003 "Notice Of Filing Of Amended Master Consolidated Class Action Complaint Modified Per The Court's Instruction At The November 21, 2003 Hearing" ("Notice of Filing"). The grounds for this motion are as follows:

1) At the November 21, 2003 hearing on defendants' Motion to Dismiss the Amended Master Consolidated Class Action Complaint ("AMCC"), counsel for defendants brought to the Court's attention several fundamental deficiencies in the original AMCC that went directly to plaintiffs' Article III and RICO standing to assert the claims set forth in the AMCC.

2) Issues of standing go directly to the Court's jurisdiction and therefore may be raised at any stage of the litigation. See Libertad v. Welch, 53 F.3d 428, 436 (1st Cir. 1995) (ruling on standing argument raised for the first time at oral argument).

3) At the hearing, the court allowed plaintiffs to file an amended AMCC addressing the standing deficiencies raised by counsel for defendants.


4) On December 5, 2003, plaintiffs filed the Notice of Filing along with a modified version of the AMCC that purported to respond to the Court's directive to address the standing deficiencies raised by defendants.

5) The modified AMCC fails to cure fundamental deficiencies that go directly to plaintiffs' Article III and RICO standing.

6) Defendants' Response to plaintiffs' Notice Of Filing is necessary to address the standing deficiencies in plaintiffs' modified AMCC and inform the Court as to the permissible scope of this case.

WHEREFORE, defendants move that this Court grant them leave to file a Response to Plaintiffs' Notice of Filing.

Dated: December 19, 2003


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